THE HON'BLE MRS JUSTICE T.MEENA KUMARI

And

THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY

WRIT PETITION NO: 21057 of 2005

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28th September, 2005

Between:

P.C. Subba Reddy died per LRsP. Srikanth Reddy S/o Late P.C. Subba Reddy R/o 8/101, Main Bazar Tadipatri, Main Bazar, Tadipatri, Ananthapur district (Brought on record vide order in MA No. 564/2003 dated 23-10-2003

..... PETITIONER

AND

1 the General Manager (Rep by UOI) south Central Railway, Rail Nilayam, Secunderabad
2 The Financial Advisor and Chief Accountants Officer, South Central Railway, Raiway Nilayam, Secunderabad
3 The Divisional Railway Manager, South Central Railway, Guntakal Division, Guntakal
4 The Senior Divisional Personnel Officer,, South Central Railway, Guntakal Division, Guntakal
5 The Senior Divisional Accounts Officer, South Central Railway, Guntakal Division, Guntakal
6 The Divisional Mechanical Engineer (Power) South Central Railway, Guntakal Division, Guntakal

.....RESPONDENTS

THE COURT MADE THE FOLLOWING :

ORAL ORDER: (*per* THE HON'BLE MRS JUSTICE T.MEENA KUMARI)

The present writ petition has been filed aggrieved by the dismissal of O.A. No. 1256 of 2005 on the file of the Central Administrative Tribunal, dated 8-4-2005.

The facts go to show that the petitioner filed the above O.A. to declare the inaction of the respondents to take suitable steps as per the instructions issued, vide Railway Board's letter dated 9-1-1998 to re-fix his pay taking into account the running allowance admissible duly re-designating him as Loco Inspector and to grant pensionery benefits as arbitrary and illegal and to consequently direct the respondents to re-fix his pay with effect from 9-1-1998 taking into account the running allowance admissible duly re-designating him as Loco Inspector as per the Railway Board's letter dated 9-1-1998 and also to re-fix his pension taking into account the admissible running allowances on his retirement with effect from 30-6-2000 with all consequential benefits.

The applicant was medically de-categorized from the post of Driver to Loco Inspector in May 1995 and he retired from service on 30-6-

2000. After retirement from service, the running allowances as Senior Goods Driver were not included, which were admissible to him as per rules. The applicant was also not granted Special Pay of Rs.300/-, which was attached to the post of Chief Crew Controller. He submitted an application to the respondents for the said relief, but it was rejected and against the said rejection order, the applicant filed appeal, but there was no response. It is the case of the applicant that the Railway Board has taken a decision to abolish the supervisory post of Loco Inspectors/Power/Crew Controllers and introduced a scheme modifying the designation of the supervisory post of Loco Inspectors/power/Crew Controllers as Loco Running Supervisors/Loco Inspectors, vide Railway Board letter No. E(P&A) II-83/RS/10, dated 9-1-1998. It is further stated that in the modification orders of Railway Board's letter dated 9-1-1998, consequent on abolition of Power Controllers, guidelines were issued to re-designate these posts as Loco Running Supervisors /Loco Inspectors, by adding the number of posts existing in the cadre of Power/Crew Controllers, to the cadre of Drivers. He contended that the retirement benefits besides other benefits as were being admissible to running supervisors on par with drivers with effect from 9-1-1998 should also be extended to the applicant as per Railway Board's policy a she was on pay rolls as on 9-1-1998 and retired from service on 30-6-2000.

The respondents filed counter denying the claim of the applicant contending that the applicant was found unfit in A-1 medical group by the competent medical authority and made him fit in A2 category in May 1995 and as such the applicant could not be continued in the post of Driver and hence he was considered for alternative appointment as per the existing instructions and he was absorbed as Crew Controller and as per the proceedings he was not eligible to draw the special pay of Rs.300/- and also any retirement benefits available to Loco Inspectors at the time of retirement as per the Railway Board's instructions contained in letter dated 25-11-1992. The applicant accepted the above said conditions and joined the said post and continued in the said post till his retirement on 30-6-2000

and his retirement benefits were settled based on the last pay/average pay during the last 10 months as per extent rules. It is further contended that his first representation was three months after his retirement, which was rejected for grant of 30% of pay as running allowance for the purpose of pensionery benefits. It was further contended by the respondents that as per the instructions, the medically de-categorized running staff were not eligible for the special pay while working as Power Controller/Crew Controller, as the special pay is being sanctioned for the running staff to be posted as Power Controller to compensate fall in emoluments. The subsequent proceeding of the Railway Board dated 9-1-1998 modifying the earlier scheme of filing up of Loco Running supervisors was abolished in the cadre of Power/Crew Controller and Loco Running Supervisors and would consist of only Loco Inspectors and they would perform the duties hitherto performed by Power/Crew Controllers eligible, and suitable Mail/Express Drivers, Senior Passenger/Passenger Drivers, Senior Goods/Goods Driver, shall be drafted. As the applicant was a regular Crew Controller as per the Scheme dated 25-11-1992, and retired as such, he was not entitled for any benefits, and it would be pertinent to submit that the applicant being not fit for Driver's duty could not be considered for posting as Loco Inspector as the medical fitness for the said cadre was same that of driver. It is the further contention of the respondents that the applicant was made unfit to work as Senior goods Driver and he was absorbed as Crew Controller in the pay scale of Rs.2000-3200/- and initial pay was fixed at Rs.2525/- after adding 30% of the basic pay in lieu of Running Allowance as per rules. It was clearly stated in the order of absorption that he was not entitled for the special pay of Rs.300/-, as he was medically de-categorised and no more running staff. It was also stated in the said order that the applicant could be considered for promotion to the higher grade of Chief Crew Controller in the scale of Rs.2375-3500/-. Since the applicant accepted the said condition and joined the said post without making any grievance and as such the contention for grant of special pay of Rs.300/-, at this belated stage was liable to be rejected. As the Loco Inspectors were only eligible for

adding 30% of pay in lieu of Running Allowance for retirement benefits and the applicant was not eligible to be posted as Loco Inspector as a result of his medical de-categorisation, his retrial benefits were settled based on the pay he was drawing as Crew Controller at the time of his retirement.

The Tribunal dismissed the O.A. filed by the applicant as devoid of merit and could not be entertained in view of the Railway Rules in the matter.

Heard both sides.

It is contended by the learned counsel for the applicant that as per Clause (e) of the said circular, the applicant who was Driver so drafted will continue to progress in the Running cadre and will be subjected to all the terms and conditions of service as applicable to Running staff, including pay and allowance.

However, it is to be seen that the applicant was found medically unfit to be a driver and was absorbed as Crew Controller on regular basis, but could not be said to form part of running staff and as such he was not entitled for any allowance as such, which were granted to running staff in the railways and extended to the Drivers as per the modified scheme. The applicant was not belonging to the category, which was coming over to supervisory posts and hence he was not entitled for any such benefits based on the modified scheme under the Railway Board Rules. The contention of the applicant that the Drivers drafted to perform the duties of Power/Crew Controllers were entitled to allowances in lieu of kilometerage of 120 KM, as admissible to Drivers, which be extended to him, was also without any merit as the applicant ceased to be Driver from May 1995 onwards and he was regularly absorbed in the stationery post of Crew Controller with a fixed pay scale duly granting pay fixation benefits as per the then existing rules, and hence the applicant was not entitled to the benefits as claimed.

Further, in view of the admitted fact that the applicant was

medically de-categorized Driver, as per Clause (g) of the said circular, Medically de-categorized drivers will be eligible to be drafted to perform the duties of Power/Crew Controllers. In their case the tenure of three years as stated in clause (f) of the said circular will not be applicable to them. However, there is no mentioning of entitlement for running duties to the medically de-categorised persons. It speaks only the tenure of three years will not be applicable. As there is no clause, which makes medically de-categorised persons to be entitled for the claiming of running allowance, we do not find any merit in the writ petition since the applicant cannot be compared with Loco Running Supervisor or Loco Inspector in view of the fact that he had been medically de-categorised.

For the reasons stated above, we do not find any merit in the writ petition and accordingly the writ petition is dismissed. No order as to costs.

T. MEENA KUMARI, J.

P. LAKSHMANA REDDY,J.

28-09-2005

kvsn/skm